

Applicant : J. Carl Cooper  
Appl. No. : 08/824,496  
Filed : 03/14/1997  
Title : Improved IFB System Apparatus and Method

Grp./A.U. : 2644  
Examiner : Minsun Oh Harvey

Docket No. : JCC-396A

March 19, 2003

Honorable Commissioner for Patents  
Washington, D.C. 20231

Via Fax # (703) 872-9315

#37/EOT①  
w/Reply  
Brief  
made  
3/24/02  
Official  
3-20-03  
3/24/03

### EXTENSION OF TIME

Applicant respectfully requests extension of time for reply and entry of this short Reply Brief after the 2 month period provided in 37 C.F.R. § 1.193(b)(1). Applicant notes the Patent Application Transmittal Letter of the original filing date, signed by applicant 3/14/97 provides authorization to charge payment for any patent application processing fees under 37 C.F.R. 1.17. This authorization is considered "a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission" as set forth in 37 C.F.R. § 1.136(a)(3). The reason for the extension is that applicant did not receive a copy of the examiner's reply until March 19, 2003 as set forth in the accompanying declaration.

### APPEAL REPLY BRIEF

Applicant's claims utilize terms which are terms of art having particular meaning to persons of ordinary skill in the art and are accordingly pointed out and/or defined in applicant's specification. Terms of art which would be known to the person of ordinary skill as of the filing date of the application include "director", "program"

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or "program signal", "program audio" and "interrupted feed back" and its abbreviation "IFB". See Cooper 9/9/02 Declaration paragraphs 6-9. Applicant, choosing to be his own lexicographer, has specifically defined other claim terms in the specification. These terms include: "feedback signal", "talent", "talent signal", "mix minus" and "mix minus signal" and "cancellation signal". See Cooper 9/9/02 Declaration paragraphs 10-15.

The claims at issue utilize one or more of these terms of art or specially defined terms. In particular, all of the claims use the term "mix minus signal" which the person of ordinary skill in the art would know from the teachings of the present invention to be a special signal including program audio with the talent's voice removed or reduced. Program audio in turn is also a specially defined term, as is program signal. For example the term "program" or "program signal" as used in the claims is a term of art referring "to a mixture of electronic signals including the talent signal which is recorded or broadcast" productions of television and radio like programs as set forth at the last three lines of page 6 of the specification. The person of ordinary skill in the art would know that none of the signals which occur in telephone systems of the type described in the present prior art are a "program signal" or "mix minus signals" as that term is defined in the instant specification and as used in the rejected claims.

The examiner has failed to allow applicant to be his own lexicographer. The examiner fails to recognize and use the proper definition of various claim terms which are specially defined in the specification. These claim terms in turn define the scope of the claims. For example, at page 10, third paragraph, the examiner's answer states:

The appellant's argument is not persuasive because the claims do not recite such limitations, and certainly, the term "program signal" in its broadest reasonable interpretation need not be limited to what Appellant has argued; if Appellant wishes for the term to be limited to something specific, the details must be recited to be given weight in the case of so broad a term as "program signal".

Appellant believes the examiner's position is incorrect. Words in a claim will be given their ordinary and accustomed meaning, unless it appears that the inventor used them

differently<sup>1</sup>. Here the applicant uses claim terms differently (and more narrowly) than the examiner. Claims are to be construed in light of the specification,<sup>2</sup> and an inventor may be his own lexicographer.<sup>3</sup> Here many claim terms are clearly and specifically defined in the specification and/or as terms of art. These terms should be given the "broadest reasonable interpretation" however the examiner goes far beyond that broadest reasonable interpretation by ignoring the definition provided in the specification and ignoring what one of skill in the art would know the claim terms to mean from the usage in the art and definitions given in the specification. Going beyond what the person of ordinary skill would know is not reasonable.

The examiner's apparent requirement that each and every claim term be defined in detail in the claim departs from well settled practice and law. Patent documents are written for persons of ordinary skill in the field of art to which the invention pertains. Patent claims are not required to be written as a comprehensive tutorial and treatise for the generalist, instead they are concise statements written in terms known and understood by the person of ordinary skill in the art from their knowledge taken in conjunction with the description and definitions given in the specification.

The examiner's reply is in itself inconsistent in many respects. For example at page 10, second paragraph, the examiner's answer states:

The appellant's argument is not persuasive because even though Agrawal or Umemoto systems may be different from the appellant's claimed invention, as described above Agrawal and Umemoto references read on the claims.

Either the claimed invention is different or the "references read on the claims". The examiner fails to explain how both occur.

The examiner's reply appears to improperly add new prior art to the file. Under (9) Prior Art of Record, page 3 of the reply, the examiner lists Kuo pages 35-36.

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<sup>1</sup> Jonsson v. Stanley Works, 903 F.2d 812, 14 U.S.P.Q.2d (BNA) 1863, 1871 (Fed. Cir. 1990).

<sup>2</sup> U.S. v. Adams, 383 U.S. 39, 49, 86 S. Ct. 708, 15 L. Ed. 2d 572, 148 U.S.P.Q. (BNA) 479, 482 (1966).

<sup>3</sup> Autogiro Co. of America v. U.S., 181 Ct. Cl. 55, 384 F.2d 391, 397, 155 U.S.P.Q. (BNA) 697, 702 (1967); Ex Parte Wolk, Johanson, and Alpert, 225 U.S.P.Q. (BNA) 225, 227, 1984 WL 63011 (Pat. & Trademark Office Bd. App. 1984)

Attached to the examiner's reply are pages xi-xiv of the Preface to the Kuo, et. al. book from October 1995.

Applicant has attempted to make this reply succinct in view of the delay which has transpired, however Applicant does not intend to waive previous positions by failure to reargue them herein.

In that the claims clearly distinguish over the art of record, applicant requests favorable action and remand to the examiner for timely issuance of notice of allowance.

Respectfully Submitted,

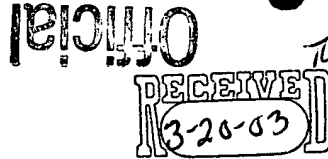


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I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office, Fax No. (703) 872-9315 on March 20, 2003.



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March 20, 2003

**DECLARATION UNDER 37 C.F.R. § 1.132**

1. My name is J. Carl Cooper. I am the applicant and have appointed myself as agent in the above identified application.
2. On October 17, 2002 I filed a Notice of Appeal and Appeal Brief in the above identified application.
3. This Declaration is made in support of filing of Appellant's Reply Brief after two months from the Examiner's Answer to the Appeal Brief as provided in 37 C.F.R. § 1.136(b).
4. Around December 2002 I had not received the Examiner's. I phoned Examiner Harvey's supervisor, Mr. Bill Isen and was informed the Examiner's Answer would be sent soon.
4. On March 18, 2003 I still had not received the Examiner's Answer. I called the Technology Center 2600 Customer Service Office on that day and was told the Examiner's Answer had been mailed in December.
5. On March 19, 2003 I received a copy of the Examiner's Answer via fax. Since I had not previously received this paper I was unable to make a reply within two months.

I hereby declare that all statements made herein of my own knowledge are true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

J. Carl Cooper